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No. 45

In the Supreme Court of the United States

OCTOBER TERM, 1947

THE FEDERAL CROP INSURANCE CORPORATION,
PETITIONER,

v.

A. A. MERRILL AND H. D. MERRILL, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

BRIEF FOR THE PETITIONER

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Specification of errors to be urged	10
Summary of argument	11
Argument:	
Petitioner, an agency of the United States, was not estopped by the unauthorized conduct of its agents from denying its liability to respondents under the federal crop insurance contract here involved	14
Conclusion	33
Appendix	34
Federal Crop Insurance Act	34
Federal Register Act, Secs. 5, 7	51
Wheat Crop Insurance Regulations	53

CITATIONS

Cases:	
Birmingham v. *United States*, 4 F. 2d 508	17, 23, 32
Carr v. *United States*, 98 U. S. 433	19
Cherry Cotton Mills, Inc. v. *United States*, 327 U. S. 536	24, 25
Clallam County v. *United States*, 263 U. S. 341	25, 30
Clearfield Trust Co. v. *United States*, 318 U. S. 363	33
Coleman v. *United States*, 100 F. 2d 903	24, 32
Cooke v. *United States*, 91 U. S. 389	26
Crawford v. *United States*, 40 F. 2d 199	23
Emergency Fleet Corp. v. *Western Union Tel. Co.*, 275 U. S. 415	25, 30
Federal Land Bank v. *Bismarck Lumber Co.*, 314 U. S. 95	26
Felder v. *Federal Crop Insurance Corp.*, 146 F. 2d 638	17, 19
F. H. A. v. *Burr*, 309 U. S. 242	25
Floyd Acceptances, The, 7 Wall. 666	26
Frier v. *Federal Crop Insurance Corp.*, 152 F. 2d 149	20, 21
Graves v. *New York ex rel. O'Keefe*, 306 U. S. 466	26
Guaranty Trust Co. v. *United States*, 304 U. S. 126	27
Henderson v. *Nixon*, 168 P. 2d 594	22
Inland Waterways Corp. v. *Young*, 309 U. S. 517	24, 25
Keifer & Keifer v. *R. F. C.*, 306 U. S. 381	25
McFall v. *Arkoosh*, 37 Idaho 243	18, 22

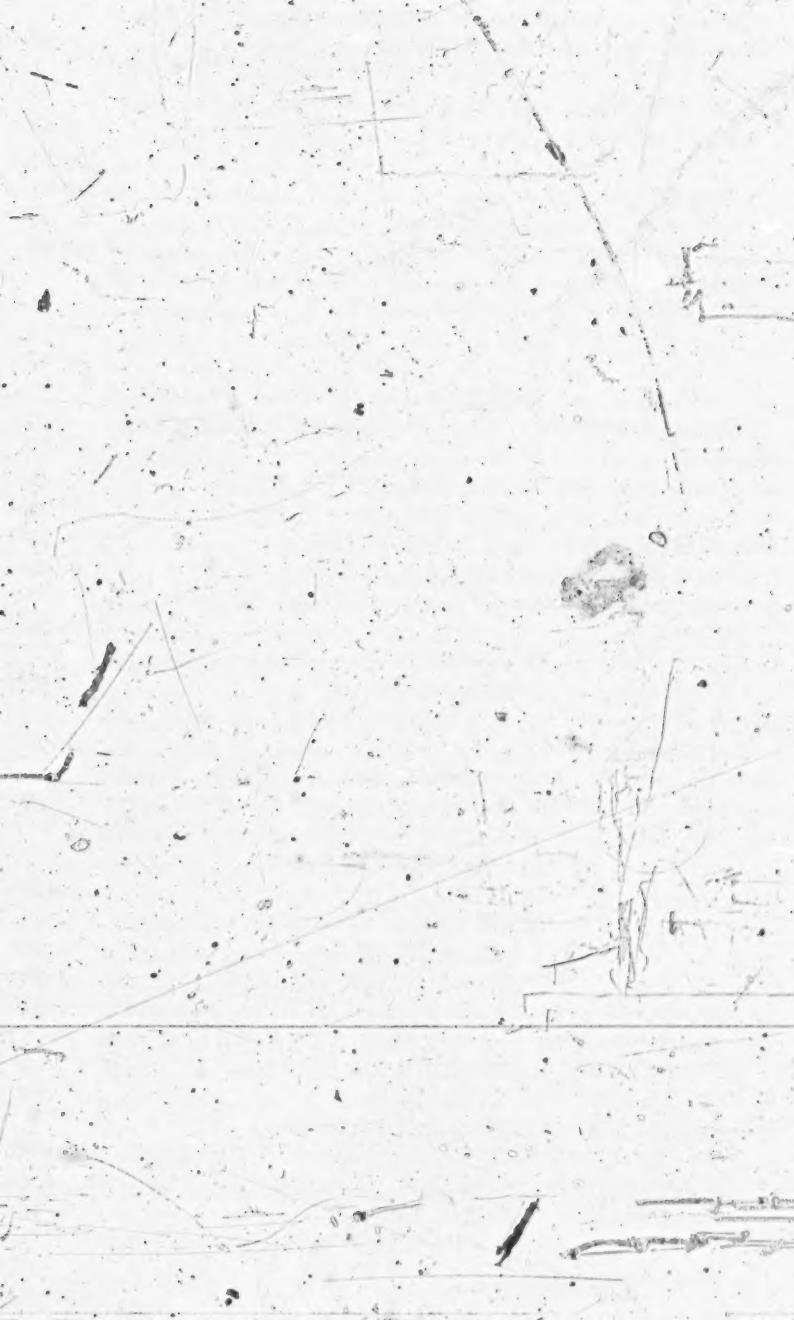
Cases—Continued Page

MacGregor v. *Westinghouse Electric & Mfg. Co.*, 329 U. S. 402 19
Maryland Casualty Co. v. *United States*, 251 U. S. 342 17
Morrison v. *Hutchins*, 158 Kan. 123 22
Munro v. *United States*, 303 U. S. 36 23
Northern Assurance Co. v. *Grand View Building Association*, 183 U. S. 308 33
Pittman v. *Home Owners' Loan Corp.*, 308 U. S. 21 26
Rock Island, etc. R. Co. v. *United States*, 254 U. S. 141 20
Rodgers v. *United States*, 66 F. Supp. 663 24
Royal Indemnity Co. v. *United States*, 313 U. S. 289 18
Sola Electric Co. v. *Jefferson Electric Co.*, 317 U. S. 173 19
Standard Oil Co. v. *United States*, 267 U. S. 76 30
Sternfeld v. *United States*, 32 F. 2d 789 ..... 24, 32
Sun Insurance Office v. *Scott*, 284 U. S. 177 33
Sutton v. *United States*, 256 U. S. 575 ..... 12, 20
United States v. *Allegheny County*, 322 U. S. 174 19
United States v. *Chickasha Cotton Oil Co.*, 115 F. 2d 135 ..... 19, 24
United States v. *City and County of San Francisco*, 310 U. S. 16 19
United States v. *Hoar*, 2 Mason 311, Fed. Cas. No. 15,373 26
United States v. *Kirkpatrick*, 9 Wheat. 720 27
United States v. *Loveland*, 25 F. 2d 447, reversed 278 U. S. 665 ..... 23, 32
United States v. *Lyke*, 19 F. 2d 876 23
United States v. *Shaw*, 309 U. S. 495 25
United States v. *Sherwood*, 312 U. S. 584 25
United States v. *Stewart*, 311 U. S. 60 19
United States v. *Thomas*, 107 F. 2d 765 ..... 19, 24, 30
United States v. *Thompson*, 98 U. S. 486 26
United States v. *U. S. Fidelity Co.*, 309 U. S. 506 25
United States v. *Valnesa*, 81 F. 2d 615 24
United States v. *Worley*, 281 U. S. 339 ..... 23, 30
Utah Power & Light Co. v. *United States*, 243 U. S. 389 ..... 12, 19
Walker v. *United States*, 139 Fed. 409 19
White v. *United States*, 270 U. S. 175 30
Wilber National Bank v. *United States*, 69 F. 2d 526, affirmed, 294 U. S. 120 ..... 19, 20, 23, 24, 32
Yakus v. *United States*, 321 U. S. 414 ..... 18, 21

Statutes:

Act of February 16, 1938, c. 30, Title V, Sec. 516, 52 Stat. 72, 77, 7 U. S. C. 1516 29
Act of June 21, 1941, c. 214, Sec. 8, 55 Stat. 255, 256, 7 U. S. C., Supp. V, 1516 30
Act of December 23, 1944, 58 Stat. 918 ..... 14, 29
Act of July 30, 1947 (P. L. 266, c. 356, 80th Cong., 1st Sess. 29

Statutes—Continued	Page
Department of Agriculture Appropriation Act, 1944 (Act of July 12, 1943, 57 Stat. 392, 418)	29
Department of Agriculture Appropriation Act, 1945 (Act of June 28, 1944, 58 Stat. 425, 451)	29
Federal Crop Insurance Act (Act of February 16, 1938, c. 30, Title V, 52 Stat. 72, as amended, 7 U. S. C., Supp. V, 1501 *et seq.*)	3, 34
Sec. 502	28, 34
Sec. 503	24, 34
Sec. 506	17, 22, 37
Sec. 516	17, 22, 49
Federal Register Act (Act of July 26, 1935, c. 417, 49 Stat. 500, 44 U. S. C. 301 *et seq.*)	21
Sec. 5	51
Sec. 7	22, 52
Reorganization Act of 1945 (Act of December 20, 1945, c. 582, Tit. I, 59 Stat. 613, 5 U. S. C., Supp. V, 133y *et seq.*)	3
Miscellaneous:	
Annual Report, Sec. Agric., 1943, pp. 231–235	29
Annual Report, Sec. Agric., 1944, pp. 147–148	28
Annual Report, Sec. Agric., 1945, p. 115	29
1 Code of Federal Regulations, § 2.2 (d)	22
Gaus, White and Dimock, *Frontiers of Public Administration* (1936), p. 89	27
Gellhorn, *Federal Administrative Proceedings* (1941), pp. 116–144 *passim*, particularly 126, 130	27
Griswold, *Government in Ignorance of the Law* (1934), 48 Harv. L. Rev. 198	22
Herring, *Public Administration and the Public Interest* (1936), pp. 258–278 *passim*, particularly 274–275	22
H. Doc. 150, 75th Cong., 1st Sess., Report and Recommendations of the President's Committee on Crop Insurance, pp. 2–3, 11–12	28
H. Rep. No. 1479, 75th Cong., 1st Sess., p. 2	29
H. Rep. No. 1592, 78th Cong., 2d Sess.	28
H. Rep. No. 450, 80th Cong., 1st Sess., pp. 32–33	30
Leiserson, *Administrative Regulation* (1942), pp. 213–214	27
Reorganization Plan No. 3 of 1946, Part V, 11 Fed. Reg. 7877, 5 U. S. C. A. 133y–16 note	3
S. Rep. No. 1298, 78th Cong., 2d Sess.	28
Wheat Crop Insurance Regulations (1945):	
Sec. 414.1, 10 Fed. Reg. 1586, 10 F. R. 10343, 14135	5
Sec. 414.37 (v), 10 Fed. Reg. 1585, 1591	4, 6
Sec. 414.42, 10 Fed. Reg. 1592	6, 16



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OPINION BELOW

The opinion of the Supreme Court of the State of Idaho (R. 140–144) is reported at 174 P. 2d 834. The District Court of the Ninth Judicial District of the State of Idaho rendered no opinion.

JURISDICTION

The judgment of the Supreme Court of the State of Idaho was entered on November 26, 1946 (R. 144). The petition for a writ of certiorari was filed on February 26, 1947, and granted on

April 28, 1947. The jurisdiction of this Court rests upon Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Were respondents entitled to recover on a Federal crop insurance policy, which incorporated by reference duly promulgated insurance regulations expressly excluding the bulk of respondent's crop from coverage and barring waivers of non-coverage by petitioner's county committee, on the ground that petitioner was "equitably estopped" from denying liability in the same way that a private insurance company would have been, since respondents lacked actual knowledge of the applicable regulations and the county committee had been informed of the nature of the crop?

STATUTES AND REGULATIONS INVOLVED

The relevant portions of the Federal Crop Insurance Act (Act of February 16, 1938, c. 30, Title V, 52 Stat. 72, as amended, 7 U. S. C., Supp. V, 1501 *et seq.*), of the Federal Register Act (Act of July 26, 1935, c. 417, 49 Stat. 500, 44 U. S. C. 301 *et seq.*), and of the Wheat Crop Insurance Regulations (10 Fed Reg. 1585, 10343, 14135) are set forth in the Appendix, *infra*, pp. 34–54.

STATEMENT

Petitioner, the Federal Crop Insurance Corporation is a wholly Government-owned corporation.

It was created by the Federal Crop Insurance Act, *infra*, pp. 34–51, as "an agency of and within the Department of Agriculture," with its Board of Directors employed in the Department and appointed by and holding office at the pleasure of the Secretary of Agriculture, *infra*, pp. 34–35, 36.[1] The Corporation was set up to carry out the purposes of the Act, *viz*, "to promote the national welfare by alleviating the economic distress caused by crop failures due to drought and other causes, by maintaining the purchasing power of farmers, and by providing for stable supplies of agricultural commodities for domestic consumption and the orderly flow thereof in interstate commerce," *infra*, p. 34. To implement these purposes, the Corporation was authorized and empowered to insure farmers against loss in yields due to unavoidable causes and to adjust and pay claims for losses. It was endowed with general corporate powers, including those pertaining to contracting and the acquisition of property, and it may sue and be sued in its corporate name in any court of competent jurisdiction, State or Federal, except

[1] Part V of the Reorganization Plan No. 3 of 1946, promulgated pursuant to the Reorganization Act of 1945 (Act of December 20, 1945, c. 582, Tit. I, 59 Stat. 613, 5 U. S. C., Supp. V, 133y *et seq.*), and effective July 16, 1946 (11 Fed. Reg. 7877, 5 U. S. C. A. 133y–16 note), transferred the administration of the program of the Federal Crop Insurance Corporation to the Secretary of Agriculture, to be "performed by him or, subject to his direction and control, by such officers and agencies of the Department of Agriculture as he shall designate."

that suits against it for nonpayment of indemnity must be brought "in the United States district court, or in any court of record of the State having general jurisdiction, sitting in the district or county in which the insured farm is located," *infra*, p. 43.

Respondents, co-partners engaged in farming operations in Bonneville County in the State of Idaho (R. 3, 106), brought suit against petitioner in a State district court in Bonneville County, Idaho, pursuant to the Federal Crop Insurance Act, *infra*, p. 43, to recover $3,960.30 (or, in lieu thereof, a specified number of bushels of wheat), on a 1945 contract of crop insurance on 460 acres of wheat which had failed (R. 106–111). By demurrer (R. 121–122) and motion to strike (R. 124–125), which were overruled by the trial court (R. 123, 125), petitioner raised the point that recovery was barred on 400 of these 460 acres by a provision of the 1945 Wheat Crop Insurance Regulations (Section 414.37 (v), 10 Fed. Reg. 1585, 1591), which were expressly made part of the insurance contract (R. 49, 113, 114). This provision of the Regulations barred coverage of "spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year," *infra*, p. 53. Petitioner made the same point in its answer and denied all liability on the 400 acres in question on the ground that the insurance contract could not and did not cover that portion of respondents' crop (R. 126–130).

A jury trial was had in March 1946, and undisputed evidence was introduced that 400 of the 460 acres involved in the action consisted of spring wheat reseeded on winter wheat acreage, within the Regulations' prohibition of coverage (R. 9–10, 11). It was also unquestioned (cf. R. 92) that the insurance contract consisted of respondents' application for insurance, signed by respondents on March 26, 1945, which did not indicate that reseeded wheat was included in the acreage sought to be covered (R. 111–113); the acceptance endorsed thereon by petitioner's agent (R. 49); and the applicable Wheat Crop Insurance Regulations, 10 Fed. Reg. 1585, 10343, 14135. The acceptance, printed on the application form, and endorsed on May 28, 1945, read as follows (R. 49, 113):

> It is understood and agreed that upon acceptance of the application by a duly authorized representative of the Corporation, as evidenced by his approval below, the insurance contract shall be in effect, provided the application has been submitted in accordance with the provisions of the application and the applicable Wheat Crop Insurance Regulations. It is further understood and agreed that the accepted application and the applicable Wheat Crop Insurance Regulations, including any amendments thereto, constitute the contract between the Corporation and the insured.

758036—47——2

A letter of acceptance, also dated May 28, 1945, signed by the same agent and received by respondents simultaneously with a copy of the accepted application (R. 13), stated that the Corporation accepted respondents' application for insurance on their 1945 spring wheat crop, and their 1946 and 1947 wheat crops, and that—

> The insurance contract consists of the accepted application and the Wheat Crop Insurance Regulations, copies of which are enclosed. We suggest that you carefully read the provisions of your contract. (R. 49, 114.)

There was likewise no dispute that the Regulations, duly published in the Federal Register on February 7, 1945, provided (a) that spring wheat reseeded on winter wheat acreage in the 1945 crop year was ineligible for insurance (10 Fed. Reg. 1591), *infra*, p. 53; and (b) that "No notice to any county committee or representative of the Corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver of or change in any part of the insurance contract or to estop the Corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation" (10 Fed. Reg. 1592), *infra*, p. 54.

Respondents did offer testimony, however, over

petitioner's objection (R. 5–6, 7, 11, 12, 13–14, 14, 20, 68, 70–71, 79), from which the jury could find that they had; when applying for the insurance, informed the Bonneville County Agricultural Conservation Committee, petitioner's county agent, that the wheat which they sought to have insured had been reseeded on winter wheat, and that the county committee, nevertheless, had raised no question as to its eligibility (R. 6–8, 10, 69–77, 78–80). They were also permitted to testify that they had not received a copy of the Regulations from petitioner and were not actually aware of the limitation on coverage under the insurance program until some months thereafter, after the loss had occurred, petitioner advised them of the restriction and refused to make payment for the reseeded wheat (R. 5, 14, 68). Likewise over petitioner's objection, respondents offered evidence from which it could be found that they had submitted the required summary of their crop for the 1945 year, which, however, designated the wheat solely as "Spring Wheat" without reference to the fact that it had been reseeded (R. 15–17, 50–52, 116–117); that the premium for insurance, which they paid, had been computed on the entire acreage of 460 acres (R. 40–43); that respondents had complied in all other respects (excepting, of course, those respecting the restrictions as to coverage) with the terms of the insurance contract (R. 15–26,

27–28); that they had suffered a loss involving the reseeded wheat (R. 14, 17, 19, 21–23, 52–55, 119–121); and that petitioner had refused to make payment for that loss (R. 45).

The trial court charged the jury that the county committee's knowledge of the facts constituted knowledge by petitioner (R. 92); that recovery on an insurance policy could not be defeated "by proving the existence of facts which would render it void, where it [an insurance company] had full knowledge of such facts when the policy was issued" (R. 92); that petitioner, "in its business of insuring producers against loss of crops, and while acting within the scope of the authority given it by the act of Congress, * * * is subject to the same rules of equity and fair dealing, and enjoys the same benefits and privileges as other persons or corporations engaged in the same business, no greater and no less" (R. 93); and that the provisions of the Wheat Crop Insurance Regulations would not bar respondents from recovering if they acted without knowledge of the Regulations and in good faith (R. 94).[2]

On these instructions, the jury returned a verdict for respondents, in the amount of $3,960.30

[2] Petitioner requested instructions that respondents were chargeable with notice of all provisions of the Wheat Crop Insurance Regulations (R. 103–104) and that the jury were not to consider the 400 acres of reseeded acreage (R. 105), but the trial judge refused both requests.

(R. 133–134), the whole sum for which suit had been brought, and judgment was entered against petitioner in that amount (R. 134).

On appeal, the Supreme Court of Idaho affirmed the judgment (R. 140–143). Ruling that an insurance company issuing a policy with full knowledge of invalidating facts may not defeat recovery by the insured, and that the agent's knowledge is likewise the "knowledge of the principal in insurance cases," the court held that if petitioner were a private corporation there would be no doubt as to its liability (R. 142). In answer to the contention that petitioner's status as a Government agency required the application of different rules, the court said (R. 143):

> * * * we are not dealing directly with the government as such nor with a duly enacted law, but are dealing with a corporation created as an agency of the Department of Agriculture and with one of its regulations adopting a policy[1] with respect to the conduct of its proprietary insurance business. The respondents purchased the insurance in question in good faith and thereafter suffered a loss. The * * * [petitioner] through its agent

[1] The court also said (R. 143): "The regulation in question is not a law. The * * * [petitioner] had authority to insure wheat crops for the years 1945, 1946, and 1947, but as a matter of policy determined not to insure in 1945 spring wheat planted on ground sown to fall wheat in 1944 and issued such regulation as a declaration of policy for the guidance of its officers and agents. * * *"

had knowledge of the material facts. It is now estopped from denying the validity of the insurance contract.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Idaho erred:

1. In holding that the petitioner was "equitably estopped" from defending against respondents' recovery on their Federal crop insurance contract.

2. In holding, despite the contrary provisions of the duly published Wheat Crop Insurance Regulations, that petitioner was bound and estopped by the Bonneville County Agricultural Conservation Committee's knowledge of the nature of respondents' crop.

3. In holding that petitioner is not fully an agency of the United States, and that it is conducting a "proprietary insurance business."

4. In holding that petitioner's regulation excluding spring wheat "reseeded on winter wheat acreage in the 1945 crop year" was not a "law," but a "declaration of policy for the guidance of its officers and agents."

5. In holding, in effect, that petitioner is governed by the rules which would fix its liability if it were a private insurance corporation.

6. In failing to hold that respondents were barred, whether or not they had actual knowledge of the contents of the regulations, by the duly published Wheat Crop Insurance Regulations, which expressly formed part of their contract,

and were therefore not entitled to recover for the loss of the excluded reseeded crop.

7. In failing to hold that petitioner was not bound on a contract unauthorized by its regulations, nor estopped to contest the contract's unauthorized coverage, whether or not the county committee had any notice or knowledge of the nature of respondents' crop.

8. In holding that respondents should recover for the loss of that part of their crop which constituted spring wheat reseeded on winter wheat acreage in the 1945 crop year.

9. In affirming the judgment of the District Court of the Ninth Judicial District of the State of Idaho in and for Bonneville County.

SUMMARY OF ARGUMENT

1. The Wheat Crop Insurance Regulations, which were an integral part of the insurance contract here involved and concerning whose binding effect respondents were repeatedly cautioned, (a) clearly excluded from the coverage of the contract, the spring wheat crop reseeded by respondents on the 400 acres sown to winter wheat in the fall of 1944; and (b) explicitly circumscribed the powers and authorities of petitioner's agents, by providing that knowledge gained by them could not be imputed to petitioner and that they had no authority to waive or change the terms of the contract. These Regulations, lawfully issued in accordance with the express au-

thority of the Federal Crop Insurance Act, had the force and effect of law. Petitioner could not, consequently, be estopped by the knowledge by its county agents of the reseeded character of respondents' crop, and their failure to advise respondents of its noneligibility for insurance, and petitioner was not precluded from subsequently denying responsibility for the crop's loss. For, it is well established that "the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 409.

2. Nor are respondents aided by the fact that they may have had no actual knowledge of the Regulations. Those dealing with an officer or agent of the United States "must be held to have had notice of the limitations upon his authority." *Sutton* v. *United States*, 256 U. S. 575, 579. Moreover, here, where their attention was repeatedly directed to the significance of the Regulations, respondents—and particularly the respondent who actively participated in the transactions involved, a lawyer by vocation—had an affirmative duty to read the Regulations. In any event, their publication in the Federal Register was sufficient, under the Federal Register Act, to afford notice to all affected persons.

3. The ruling below disregarding the Govern-

ment's immunity from estoppel because petitioner was engaged in a "proprietary insurance business" ignores precedent and finds no support either in the facts or the applicable policy considerations. This Court and the lower Federal courts have frequently rejected the estoppel rule and similar doctrines in cases involving Government soldiers' insurance policies, and nothing in the nature of the petitioner corporation or the character of its insurance program requires the acceptance of such rules here. Petitioner is an agency and instrumentality of the United States, and its activities, authorized by the Constitution, are sovereign functions, fully entitled to the protection afforded all governmental activities of the United States. The declared Congressional purpose in enacting the Federal Crop Insurance Act was to promote the national welfare, and this purpose petitioner's program is designed to attain. The crop insurance program has not been conducted for gain; it is experimental in character; it affords insurance which private companies have failed to offer and which only the Government could make available; and it has involved expenditures of some $100,000,000 in excess of returns to the Federal Government. Clearly, the program is not a "proprietary business" or "commercial" venture, and petitioner does not stand in the same relation to those insured under its terms as do ordinary insurance companies.

758036—47——3

ARGUMENT

PETITIONER, AN AGENCY OF THE UNITED STATES, WAS NOT ESTOPPED BY THE UNAUTHORIZED CONDUCT OF ITS AGENTS FROM DENYING ITS LIABILITY TO RESPONDENTS UNDER THE FEDERAL CROP INSURANCE CONTRACT HERE INVOLVED

The trial court instructed the jury that "the contract of insurance in this case consists of the application for insurance, the acceptance of the application for insurance, and the Federal Regulations controlling crop insurance for the year 1945" (Instruction No. 8, R. 92). No one quarrels with that instruction or questions its accuracy. Nor is there any doubt that the Regulations clearly and unequivocally excluded from the insurance coverage the spring wheat crop reseeded by respondents on the 400 acres sown to winter wheat in the fall of 1944.[4] Respondents applied

[4] The reasons for such exclusion are not disclosed by the record. The Department of Agriculture informs us, however, that it was decided to exclude such reseeded acreages, on the recommendation of a group of wheat farmers consulted early in January, 1945, in order to avoid any possibility that payments would be made for losses of winter wheat sown in 1944. Insurance of such wheat could, of course, hardly be afforded under the enabling act then effective (Act of December 23, 1944, 58 Stat. 918), since it had been enacted after the winter wheat had been planted. It was the practice in some areas to sow spring wheat on those portions of the field where winter wheat had previously been seeded and was thin or destroyed, without reworking the land; thus, if reseeded acreages had been insured, it would have become extremely difficult, if not impossible, to ascertain how much of the crop was insured, that is, how much was sown in the fall of 1944 and how much in the spring of 1945.

for insurance to cover their interest in "the wheat crop to be seeded for harvest as grain" in 1945, 1946, and 1947 (R. 47, 112). No particular acreage was specified in the application and no information was there supplied as to whether any of the wheat was to be reseeded on areas previously sown to winter wheat. Petitioner's acceptance of respondents' application was conditioned on its having been submitted in accordance with the provisions of the applicable Wheat Crop Insurance Regulations, which were explicitly made part of the insurance contract (R. 49, 113), and those Regulations defined "wheat crop" to mean spring or winter wheat but not to include "spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year," *infra*, p. 53.

The sole issue in this case, therefore, is this: Can respondents, notwithstanding the express exclusion of their reseeded wheat, recover for its loss, because, when applying for the insurance, and lacking actual knowledge of the Regulations, they informed petitioner's county agents of the nature of the crop they intended to grow and were then led to believe their application was proper, and because the application and their premium payment were subsequently accepted by other agents of petitioner.[5] The Supreme Court

[5] There is nothing in the record to show that any agents of petitioner other than the members of the county committee were aware of the reseeded character of respondents' crop until after the loss of the crop had occurred (cf. R. 83).

of Idaho, purporting to apply rules which would be pertinent if petitioner were a private insurance company, held it estopped from relying on the letter of the Regulations and thus precluded from denying that the insurance contract covered the reseeded acreage. Judgment was, therefore, entered for respondents. We submit that such rules are clearly inapplicable to public insurance contracts such as that here involved, and that, consequently, the judgment of the Idaho court should be reversed.

1. The Wheat Crop Insurance Regulations, which were an integral part of the insurance contract and concerning whose binding effect respondents were repeatedly cautioned in the application they made (R. 47–49, 111–113) and the letter of petitioner's agent notifying them of its acceptance (R. 49–50, 114–115), provided in part as follows (Sec. 414.12, *infra*, p. 54):

> * * * *Modification of insurance contract.*—No notice to any county committee or representative of the Corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver of or change in any part of the insurance contract or to estop the Corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation; nor

> shall any provision or condition of the insurance contract or any forfeiture be held to be waived by any delay or omission by the Corporation in exercising its rights and powers thereunder or by any requirement, act, or proceeding, on the part of the Corporation or of its representatives, relating to appraisal or to any examination herein provided for. * * *

These Regulations were duly issued by petitioner under the express authority of the Federal Crop Insurance Act,[6] *infra*, pp. 34–51, and no objection to their validity has been raised. Thus the Regulations, far from being merely "a declaration of policy for the guidance of its officers and agents,"[7] have "the force and effect of law." *Maryland Casualty Co.* v. *United States*, 251 U. S. 342, 349; *Felder* v. *Federal Crop Insurance Corp.*, 146 F. 2d 638, 640 (C. C. A. 4); *Birmingham* v.

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[6] Section 506 (e) of the Act, *infra*, p. 37, authorizes petitioner to "adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers granted to it by law may be exercised and enjoyed." Section 516 (b), *infra*, p. 50, authorizes the Secretary of Agriculture and petitioner "to issue such regulations as may be necessary to carry out the provisions" of the Act.

[7] The language is that of the court below (R. 143). If the court meant to intimate that petitioner intended to permit coverage of reseeded areas if a county committee happened to approve such an application despite the coverage limitations, the explicit provisions of the Regulations, especially the paragraph excluding waivers or changes by county committees, *infra*, p. 54, proves the inaccuracy of such a reading.

United States, 4 F. 2d 508, 510 (C. C. A. 8); *McFall* v. *Arkoosh*, 37 Idaho 243; cf. *Yakus* v. *United States* (Rutledge, J., dissenting), 321 U. S. 414, 469. By virtue of these Regulations, the powers and authorities of petitioner's agents were explicitly and definitely circumscribed. Cf. *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 294. Their knowledge, whether gained by notice or otherwise, could not be imputed to petitioner. And they had no authority, either orally, or, except upon due authorization, even in writing, to waive or change the terms of the insurance contract, as written in the application, its acceptance, and the Regulations.

In these circumstances, it is plain that petitioner could not be estopped by the conduct of the county committee. That respondents may have notified members of the committee that the crop they sought to have insured was to be reseeded over winter wheat and that the committee, nevertheless, having made no objection, proceeded to recommend acceptance of respondents' application, are matters of no moment so far as petitioner's rights and liabilities are concerned. Petitioner may still rely upon the express exclusion of the reseeded wheat acreage from the coverage of the insurance contract. For, it is a well established rule that "the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanc-

tion or permit." *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 409; *Wilber National Bank* v. *United States*, 294 U. S. 120, 123–124; *United States* v. *City and County of San Francisco*, 310 U. S. 16, 32; *United States* v. *Stewart*, 311 U. S. 60, 70; *Felder* v. *Federal Crop Ins. Corp.*, 146 F. 2d 638, 640 (C. C. A. 4); cf. *United States* v. *Chickasha Cotton Oil Co.*, 115 F. 2d 135, 137 (C. C. A. 10); *United States* v. *Thomas*, 107 F. 2d 765, 766–767 (C. C. A. 5).*

* The court's opinion below (R. 140–143) does not make explicit whether it purports to apply State or Federal rules of estoppel, but there is no doubt that, as in the case of every other issue involving the construction and consequences of the contract, the question of estoppel is to be determined by Federal law, not by the law of any State (*United States* v. *Allegheny County*, 322 U. S. 174, 183); "local rules of estoppel will not be permitted to thwart the purposes of statutes of the United States." *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173, 176; *MacGregor* v. *Westinghouse Electric & Mfg. Co.*, 329 U. S. 402.

Nor do the Federal court decisions cited in the opinion (R. 143) require the application of the estoppel bar here. They hold merely that when the Government comes into court requesting equitable relief, "equity requires that the rights of other parties interested in the subject-matter should be protected" (*Carr* v. *United States*, 98 U. S. 433, 438), even to the extent that "the acts and omissions of its officers, if they be authorized to bind the United States or to shape its course of conduct as to a particular transaction, and they have acted within the purview of their authority, may * * * work an estoppel against the government." *Walker* v. *United States*, 139 Fed. 409, 413 (C. C. M. D. Ala.). In the instant suit, of course, the Government is not invoking judicial action; it is the defendant. Moreover, the agents involved lacked authority.

2. Nor can respondents escape the impact of the express and unequivocal limitation on the authority of the county committees by urging their ignorance of the Regulations. The Government has always been favored as a litigant in the courts so far as its liability for unauthorized acts of its agents is concerned. Thus, it is well settled that those dealing with an officer or agent of the United States "must be held to have had notice of the limitations upon his authority." *Sutton* v. *United States*, 256 U. S. 575, 579; *Wilber National Bank* v. *United States*, 294 U. S. 120, 123–124. As Mr. Justice Holmes put it, "Men must turn square corners when they deal with the Government." *Rock Island, etc. R. Co.* v. *United States*, 254 U. S. 141, 143.*

Moreover, in this case, respondents were "in duty bound" to read the Regulations. *Frier* v. *Federal Crop Insurance Corp.*, 152 F. 2d 149, 150 (C. C. A. 5). The active participant on their behalf in all the transactions here involved was respondent A. A. Merrill, a lawyer by vocation (R. 3, 4, 25, 66). The application for insurance, which he signed (R. 47–49, 111–113), and the letter notifying respondents of its acceptance,

* Justice Holmes continued: "If it attaches even purely formal conditions to its consent to be sued those conditions must be complied with. * * * At all events the words are there in the statute and the regulations, and the Court is of opinion that they mark the conditions of the claimant's right."

which he received and read (R. 49–50, 114–115), again and again directed his attention to the existence of the Regulations and their significance as an integral part of the insurance contract. It was his duty, not the county committee's, to know whether insurance on the reseeded acreage had been provided by the contract. *Frier* v. *Federal Crop Insurance Corp., supra.* He can hardly plead his negligence as adequate ground for excusing respondents from the restrictions clearly made applicable to them by the Regulations.[10]

In any event, the publication of the Regulations in the Federal Register on February 7, 1945, was sufficient, under the Federal Register Act (Act of July 26, 1935, c. 417, 49 Stat. 500, 44 U. S. C. 301 *et seq.*), to give notice of their provisions "to all persons affected by them." *Yakus* v. *United States,* 321 U. S. 414, 435. That Act provides that the filing with the Division of the Federal Register of any document authorized to be published in the Federal Register by regula-

[10] The jury's verdict determined that respondents did not actually know the contents of the Regulations, and respondent A. A. Merrill testified that he had not seen a copy prior to the loss of the crop (R. 5, 14, 68). The regular office practice, however, as the Department of Agriculture informs us, is for all branch offices to enclose a copy of the regulations pertinent to the insured commodity with each returned accepted application, and petitioner's Branch Office Procedures, issued March 23, 1945, required the transmission of the applicable regulations to each insured.

tions issued pursuant to the Act shall "be sufficient to give notice of the contents of such document to any person subject thereto or affected thereby," *infra*, p. 52. The regulations so issued expressly required the publication of the Wheat Crop Insurance Regulations of the Federal Crop Insurance Corporation issued pursuant to Sections 506 (e) and 516 (b) of the Federal Crop Insurance Act, *infra*, pp. 37, 50. 1 C. F. R. § 2.2 (d). Such publication was expressly designed by Congress to bind all interested persons, such as respondents, in the same way that the Statutes at Large provide constructive notice of statutes. Cf. Griswold, *Government in Ignorance of the Law* (1934), 48 Harv. L. Rev. 198. Actual knowledge of the regulations was, therefore, unnecessary, as the Supreme Court of Idaho has itself held. *Henderson* v. *Nixon*, 168 P. 2d 594, 597; see, also, *McFall* v. *Arkoosh*, 37 Idaho 243, 245. And the rules of the Federal Register Act govern State, as well as Federal proceedings. *Morrison* v. *Hutchins*, 158 Kan. 123.

In these circumstances, respondents' lack of actual knowledge of the coverage limitations imposed by the Regulations or of the limitations therein on the authorities of the county committees and petitioner's other representatives had no legal import whatever.

3. The court below held, however, that the general rule of governmental immunity from the

effects of estoppel was inapplicable here because, in its view, petitioner was engaged in a "proprietary insurance business" (R. 143). That ruling, we submit, ignores numerous decisions of this Court and the lower Federal courts and finds no support in the facts of this case or the considerations of policy involved.

a. In *Wilber National Bank* v. *United States*, 294 U. S. 120, this Court, though it found it unnecessary to inquire whether the Government's exemption from the estoppel bar extended to suits on public insurance contracts, nevertheless, unhesitatingly reaffirmed the full breadth of that exemption, *id.*, at 123–124. And it has consistently rejected efforts to impose similar rules which would normally have been applicable to private insurance dealings, to Government insurance contracts. *United States* v. *Worley*, 281 U. S. 339 (interest not allowable); *Munro* v. *United States*, 303 U. S. 36 (statute of limitations cannot be waived by United States Attorney). The lower Federal courts, likewise, have frequently reiterated the inapplicability of the estoppel rule and similar doctrines in the case of soldiers' insurance. *Birmingham* v. *United States*, 4 F. 2d 508, 509 (C. C. A. 8) (estoppel); *United States* v. *Lyke*, 19 F. 2d 876, 877 (C. C. A. 9) (interest); *United States* v. *Loveland*, 25 F. 2d 447 (C. C. A. 3) (estoppel), reversed on other grounds, 278 U. S. 665; *Crawford* v.

United States, 40 F. 2d 199, 200 (C. C. A. 2) (estoppel); *Wilber National Bank* v. *United States*, 69 F. 2d 526 (C. A. A. 2) (estoppel), affirmed on other grounds, 294 U. S. 120; *United States* v. *Valndza*, 81 F. 2d 615, 617 (C. C. A. 6) (limitations); *Coleman* v. *United States*, 100 F. 2d 903 (C. C. A. 6) (limitations, estoppel); *Sternfeld* v. *United States*, 32 F. 2d 789, 790 (N. D. N. Y.) (estoppel); *Rodgers* v. *United States*, 66 F. Supp. 663, 665 (E. D. Pa.) (estoppel). See, also, *United States* v. *Thomas*, 107 F. 2d 765 (C. C. A. 5) (waiver of mortgage liens); *United States* v. *Chickasha Cotton Oil Company*, 115 F. 2d 135 (C. C. A. 10) (waiver of mortgage liens).

b. Nothing in the nature of the Federal Crop Insurance Corporation requires that these established principles affecting Government functions be displaced by those which might govern in the case of a private insurance company. Petitioner is a wholly Government-owned corporation, administered by the Department of Agriculture with appropriated funds; the Federal Crop Insurance Act expressly creates it "an agency of and within the Department of Agriculture," *infra*, pp. 34–35. It is, then, an instrumentality of the United States (*Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 523–524; *Cherry Cotton Mills, Inc.* v. *United States*, 327 U. S. 536, 539), and the Congressional use of the corporate form does not indicate, in itself, any intention to subject petitioner to the

rules of substantive law applicable to transactions of private business concerns. *Clallam County* v. *United States*, 263 U. S. 341; *Emergency Fleet Corp.* v. *Western Union Tel. Co.*, 275 U. S. 415, 422–426; *Inland Waterways Corp.* v. *Young*, *supra*, at 524.[11] The corporate cloak "does not alter its characteristics so as to make it something other than what it actually is, an agency selected by the Government to accomplish purely governmental purposes. * * *." *Cherry Cotton Mills, Inc* v. *United States*, *supra*.

c. Nor does the character of the Federal crop insurance program warrant any departure from the usual rules favoring government immunity. The immunities of the United States cannot be defeated by characterizing a Federal activity as "proprietary" or as a "business." Since there is no question concerning the constitutionality of the crop insurance program, it constitutes a "governmental" activity, standing "on a parity with respect to [its] constitutional immunity" with "all

[11] *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, is not to the contrary. At the most, it stands for the proposition that where federal governmental corporations are concerned, a waiver of immunity to suit should be liberally construed (*F. H. A.* v. *Burr*, 309 U. S. 242, 245; cf. *United States* v. *Shaw*, 309 U. S. 495, 501; *Inland Waterways* v. *Young*, 309 U. S. 517, 523), thus differing from the rule of strict construction which applies where the waiver of immunity is that of the sovereign itself rather than one of its corporate instrumentalities (*United States* v. *Sherwood*, 312 U. S. 584, 590–591. Cf. *United States* v. *Shaw*, *supra*, pp. 502–503; *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506, 513, 514).

activities of government constitutionally authorized by Congress." *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 102–103.

Petitioner's program embodies no policy at variance with the principle which protects the Government from estoppel. To the contrary, the considerations for applying the full reach of the principle here are as cogent as in any other case involving the Government.[12] Like the rules exempting the sovereign from the consequences of its laches and from the operation of statutes of limitation, the rule exempting it from the consequences of the unauthorized conduct of its agents finds support in "the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers" (Story, J., in *United States* v. *Hoar*, 2 *Mason* 311, 314, Fed. Cas. No. 15,373 (C. C. D. Mass.); see, also *United States* v. *Thompson*, 98 U. S. 486, 489) and in the patent fact that the Government's "fiscal operations are so various,

[12] This suit, of course, involves no such considerations as are presented, for example, in cases where the United States becomes a party to commercial paper and thus incurs "all the responsibilities of private persons under the same circumstances." *Cooke* v. *United States*, 91 U. S. 389, 396. But compare *The Floyd Acceptances*, 7 Wall. 666, 677, as to unauthorized acts of an agent in respect of negotiable paper.

and its agencies so numerous and scattered, that the utmost vigilance would not save the public from the most serious losses" if the doctrines applicable to private suits were permitted to govern. *United States* v. *Kirkpatrick*, 9 Wheat. 720, 735, per Story, J. As Mr. Justice Stone remarked in *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132: "Regardless of the form of government and independently of the royal prerogative once thought sufficient to justify it, the rule is supportable now because its benefit and advantage extend to every citizen, including the defendant, whose plea of laches or limitation it precludes * * *."[13]

The declared Congressional purpose in enacting the Federal Crop Insurance Act was "to promote the national welfare by alleviating the economic distress caused by crop failures due to drought and other causes, by maintaining the purchasing

[13] It is noteworthy that the application of the estoppel bar to the crop insurance program would not only saddle the Government with an onerous potential liability for the negligence of the numerous quasi-official county committeemen, to the obvious detriment of the public interest, but would also discourage the frequently commended trend toward decentralization and democratization in the administration of Federal programs affecting the life of our farmers and other citizens. See Gaus, White, and Dimock, *Frontiers of Public Administration* (1936), p. 89; Gellhorn, *Federal Administrative Proceedings* (1941), pp. 116–144 *passim*, particularly 126, 130; Herring, *Public Administration and the Public Interest* (1936), pp. 258–278 *passim*, particularly 274–275; Leiserson, *Administrative Regulation* (1942), pp. 213–214.

power of farmers, and by providing for stable supplies of agricultural commodities for domestic consumption and the orderly flow thereof in interstate commerce," *infra*, p. 34. Reduction in relief, emergency, and subsidy payments to farmers as well as the development of nondependent agricultural producers have been the important goals. The Government has undertaken to insure crops in order to attain such ends and not for gain. Private insurance companies have failed to offer crop insurance, and Congress and the executive branch have repeatedly recognized that private sources cannot supply such protection, that only the Government could make it available. Cf. H. Doc. 150, 75th Cong., 1st Sess., Report and Recommendations of the President's Committee on Crop Insurance, pp. 2–3, 11–12; H. Rep. No. 1592, 78th Cong., 2d Sess.; S. Rep. No. 1298, 78th Cong., 2d Sess.; Annual Report, Sec. Agric., 1944, pp. 147–148." From the beginning, it has been recog-

[14] "It is clear that any comprehensive system of crop insurance, combining yield insurance and storage of commodity reserves, would be outside the field of private insurance. * * * crop insurance must be integrated with other farm programs in order to serve its purpose most fully. It thus seems to be a function which should be performed by public agencies." H. Doc. 150, 75th Cong., 1st Sess., p. 12.

"The need or the desirability of 'all risk' crop insurance for American farmers is well recognized. * * * There is no private source from which" the farmers are to receive this protection, "it must be made available by the Government * * *." S. Rep. No. 1298, 78th Cong., 2d Sess., p. 1.

nized that the program was to be experimental.[15] Losses were anticipated, at least in the first years, and a large excess of indemnity payments over premium receipts has actually occurred. H. Rep. No. 1479, 75th Cong., 1st Sess., p. 2; Annual Report, Sec. Agric., 1943, pp. 231–235. Not only has the United States borne these losses, as it was expected to do, but Congress initially provided that petitioner need not pay its own costs of operation out of income. Cf. Annual Report, Sec. Agric., 1945, p. 115. The basic statute authorized annual appropriations of $6,000,000 for operating and administrative costs (Act of February 16, 1938, c. 30, Title V, Sec. 516, 52

[15] The 1938 statute was limited to wheat; the 1941 act extended coverage to cotton; the 1944 act provided for insurance of wheat, cotton, and flax and authorized experimental programs in limited areas for corn, tobacco, barley, and other agricultural commodities. The Department of Agriculture Appropriation Act, 1944 (Act of July 12, 1943, 57 Stat. 392, 418), and the Department of Agriculture Appropriation Act, 1945 (Act of June 28, 1944, 58 Stat. 425, 451), withdrew all funds for insurance of crops planted subsequent to July 31, 1943; no crop insurance contracts were thereafter made until the 1945 Act (Act of December 23, 1944, 58 Stat. 918) authorized insurance of crops "planted for harvest in 1945" and the program was reinstated. The Act of July 30, 1947 (P. L. 266, 80th Cong., c. 356, 1st Sess.), which makes appropriations for the Department of Agriculture for the fiscal year ending June 30, 1948, appropriates limited sums for use only in "the continuation of the trial crop insurance program * * * and expenses necessary in the liquidation of insurance contracts on the 1947 and prior crops of wheat, cotton, and flax." *id.*, Title II, Section 202.

Stat. 72; 77, 7 U. S. C. 1516), and in 1941 this sum was increased to $12,000,000. Act of June 21, 1941, c. 214, Sec. 8, 55 Stat. 255, 256, 7 U. S. C., Supp. V, 1516. In the eight years of its experience with the program, the Government has expended more than $100,000,000 in excess of the premiums it has received. H. Rep. No. 450, 80th Cong., 1st Sess., pp. 32–33.[18]

Clearly, therefore, the Federal crop insurance program bears little resemblance to a private business venture. Cf. *White* v. *United States,* 270 U. S. 175, 180; *Clallam County* v. *United States,* 263 U. S. 341, 345; *United States* v. *Thomas,* 107 F. 2d 765, 766 (C. C. A. 5). This is a venture quite different from the "insurance business" with which *Standard Oil Co.* v. *United States,* 267 U. S. 76, was concerned. What this Court said in *United States* v. *Worley,* 281 U. S. 339, 342–343, in distinguishing the *Standard Oil* case and in refusing to extend the rule of that case to cases of Government soldiers' insurance policies, is equally applicable to the insurance contract involved here:

> The Act [involved in the Standard Oil case] authorized the Bureau to adopt and

[18] The fact that petitioner receives premiums does not, of course, render its functions "proprietary" as contrasted with "governmental." "Many departments receive fees, or some other form of compensation, for services rendered to private persons." *Emergency Fleet Corp.* v. *Western Union Tel. Co.,* 275 U. S. 415, 424.

publish forms of policies and to establish reasonable rates. The policies adopted by the Bureau and used in that case contained a promise to pay losses within a specified time. Under that form of contract private underwriters are liable for interest when payment is not made as agreed. *There was nothing in the statute to disclose an intention on the part of the United States to bear any part of the cost of the insurance or to give pecuniary aid to the owners of vessels or other property insured. And as a matter of fact a large profit resulted from the operation of the business.* Annual Report of the Director of the U. S. Veterans' Bureau, 1923, page 675.

On the other hand, the Act of October 6, 1917 [governing soldiers' insurance], discloses a purpose on the part of the United States to protect those engaged in war service and their dependents and to contribute to their financial welfare. It provides for payment by the United States of family allowances in certain cases and of compensation for death or disability of officers, enlisted men and members of the army and navy nurse corps in active service resulting from injury or disease contracted in the line of duty. * * *

* * * The United States bore expenses of administration and excess mortality and disability cost resulting from the hazards of war. The insurance was limited to $10,000 and was made payable in 240 equal monthly installments; it was

> made not assignable nor subject to claims of creditors of the insured or of the beneficiary. The premiums were not adequate. The Congress intended that the United States should bear, and undoubtedly it has borne, a large part of the cost. Consequently the payments include both insurance and pension. *White* v. *United States*, 270 U. S. 175, 180. [Italics supplied.]

Here, too, the Government "did not enter the field of business in the accepted sense for commercial purposes and pecuniary gain, and therefore does not stand in the same relation to the insured as do ordinary insurance companies. It can be held only to the extent that it has expressly consented to be held * * *. No officer or employee of the government can waive or set aside the provisions of the statute, nor bind the government by any waiver, express or implied." *Birmingham* v. *United States*, 4 F. 2d 508, 509 (C. C. A. 8). See, also, *United States* v. *Loveland*, 25 F. 2d 447 (C. C. A. 3), reversed on other grounds, 278 U. S. 665; *Wilber National Bank* v. *United States*, 69 F. 2d 526 (C. C. A. 2), affirmed on other grounds, 294 U. S. 120; *Coleman* v. *United States*, 100 F. 2d 903 (C. C. A. 6); *Sternfeld* v. *United States*, 32 F. 2d 789 (N. D. N. Y.)."[17]

[17] It may be noted that, even if petitioner might generally be held estopped by its agents' conduct under the Federal program, it would by no means be clear that respondents are entitled to recover. As already indicated, *supra*, note 8, the question of estoppel in cases involving Federal crop in-

CONCLUSION

For the above reasons, it is respectfully submitted that the judgment of the Supreme Court of the State of Idaho should be reversed.

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surance contracts is controlled not by the law of any state but by the Federal law. And the Federal rule, enunciated in *Northern Assurance Company* v. *Grand View Building Association*, 183 U. S. 308, and *Sun Insurance Office* v. *Scott*, 284 U. S. 177, and properly applicable to the present case (cf. *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, 367), would not bar petitioner because of its agents' conduct from demonstrating that respondents' loss was not covered by the appropriate terms of the insurance contract as executed.

APPENDIX

1. The Federal Crop Insurance Act (Act of February 16, 1938, c. 30, Title V, 52 Stat. 72, as amended by the Act of June 21, 1941, c. 214, 55 Stat. 255, and the Act of December 23, 1944, c. 713, 58 Stat. 918, 7 U. S. C. 1501–1518, and 7 U. S. C., Supp. V, 1502, 1506 (h), 1508, 1516, 1518, and 1519), provides as follows:

SEC. 501. This title may be cited as the "Federal Crop Insurance Act." Except as otherwise expressly provided the provisions in titles I to IV, inclusive, shall not apply with respect to this title, and the term "Act" wherever it appears in such titles shall not be construed to include this title. (7 U. S. C. 1940 ed. 1501, 52 Stat. 72.)

Declaration of Purpose

SEC. 502. It is the purpose of this title to promote the national welfare by alleviating the economic distress caused by crop failures due to drought and other causes, by maintaining the purchasing power of farmers, and by providing for stable supplies of agricultural commodities for domestic consumption and the orderly flow thereof in interstate commerce. (7 U. S. C. 1940 ed. Supp. V, 1502, 52 Stat. 72, 55 Stat. 255.)

SEC. 503. To carry out the purposes of this title, there is hereby created as an agency of and within the Department of Agriculture a body corporate with the

name "Federal Crop Insurance Corporation" (herein called the Corporation). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices elsewhere in the United States under rules and regulations prescribed by the Board of Directors. (7 U. S. C. 1940 ed. 1503, 52 Stat. 72.)

Capital Stock

SEC. 504. (a) The Corporation shall have a capital stock of $100,000,000 subscribed by the United States of America, payment for which shall, with the approval of the Secretary of Agriculture, be subject to call in whole or in part by the Board of Directors of the Corporation.

Any impairment of the capital stock described in this subsection shall be restored only out of operating profits of the Corporation. (7 U. S. C. 1940 ed. 1504 (a), 52 Stat. 72.)

(b) There is hereby authorized to be appropriated not more than $100,000,000 for the purpose of subscribing to said stock. No part of such sum shall be available prior to July 1, 1938. The appropriation for such purpose for the fiscal year ending June 30, 1939, shall not exceed $20,000,000 and shall be made only out of the unexpended balances for the fiscal year ending June 30, 1938, of the sums appropriated pursuant to section 15 of the Soil Conservation and Domestic Allotment Act, as amended. (7 U. S. C. 1940 ed. 1504 (b), 52 Stat. 72.)

(c) Receipts for payments by the United States of America for or on account of such stock shall be issued by the Corpora-

tion to the Secretary of the Treasury and shall be evidence of the stock ownership by the United States of America. (7 U. S. C. 1940 ed. 1504 (c), 52 Stat. 72.)

Management of Corporation

SEC. 505. (a) The management of the Corporation shall be vested in a Board of Directors (hereinafter called the "Board") subject to the general supervision of the Secretary of Agriculture. The Board shall consist of three persons employed in the Department of Agriculture who shall be appointed by and hold office at the pleasure of the Secretary of Agriculture. (7 U. S. C. 1940 ed. 1505 (a), 52 Stat. 72.)

(b) Vacancies in the Board so long as there shall be two members in office shall not impair the powers of the Board to execute the functions of the Corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the Board. (7 U. S. C. 1940 ed. 1505 (b), 52 Stat. 72.)

(c) The Directors of the Corporation appointed as hereinbefore provided shall receive no additional compensation for their services as such directors but may be allowed actual necessary traveling and subsistence expenses when engaged in business of the Corporation outside of the District of Columbia. (7 U. S. C. 1940 ed. 1505 (c), 52 Stat. 73.)

(d) The Board shall select, subject to the approval of the Secretary of Agriculture, a manager, who shall be the executive officer of the Corporation with such power and authority as may be conferred upon him by the Board. (7 U. S. C. 1940 ed. 1505 (d), 52 Stat. 73.)

General Powers

SEC. 506. The Corporation—

(a) shall have succession in its corporate name; (7 U. S. C. 1940 ed. 1506 (a), 52 Stat. 73).

(b) may adopt, alter, and use a corporate seal, which shall be judicially noticed; (7 U. S. C. 1940 ed. 1506 (b), 52 Stat. 73).

(c) may make contracts and purchase or lease and hold such real and personal property as it deems necessary or convenient in the transaction of its business, and may dispose of such property held by it upon such terms as it deems appropriate; (7 U. S. C. 1940 ed. 1506 (c), 52 Stat. 73.)

(d) subject to the provisions of section 508 (c), may sue and be sued in its corporate name in any court of competent jurisdiction, State or Federal: *Provided*, That no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property; (7 U. S. C. 1940 ed. 1506 (d), 52 Stat. 73.)

(e) may adopt, amend, and repeal by-laws, rules, and regulations governing the manner in which its business may be conducted and the powers granted to it by law may be exercised and enjoyed; (7 U. S. C. 1940 ed. 1506 (e), 52 Stat. 73.)

(f) shall be entitled to the free use of the United States mails in the same manner as the other executive agencies of the Government; (7 U. S. C. 1940 ed. 1506 (f), 52 Stat. 73.)

(g) with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, serv-

ices, facilities, officials, and employees thereof in carrying out the provisions of this title; (7 U. S. C. 1940 ed. 1506 (g), 52 Stat. 73.)

(h) may conduct researches, surveys, and investigations relating to crop insurance, and preparatory to the application of the Act to other basic commodities when so provided by law, shall assemble data relative to field corn, for the purpose of establishing a satisfactory actuarial basis for such commodity; (7 U. S. C. 1940 ed. Supp. V, 1506 (h), 52 Stat. 73, 55 Stat. 255.)

(i) shall determine the character and necessity for its expenditures under this title and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other laws governing the expenditure of public funds and such determinations shall be final and conclusive upon all other officers of the Government; and (7 U. S. C. 1940 ed. 1506 (i), 52 Stat. 73.)

(j) shall have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation and all such incidental powers as are customary in corporations generally. (7 U. S. C. 1940 ed. 1506 (j), 52 Stat. 73.)

Personnel

SEC. 507. (a) The Secretary shall appoint such officers and employees as may be necessary for the transaction of the business of the Corporation, which appointments may be made without regard to the civil-service laws and regulations, fix their compensation in accordance with the provi-

sions of the Classification Act of 1923, as amended, define their authority and duties, delegate to them such of the powers vested in the Corporation as he may determine, require bond of such of them as he may designate, and fix the penalties and pay the premiums of such bonds. The appointment of officials and the selection of employees by the Secretary shall be made only on the basis of merit and efficiency. (7 U. S. C. 1940 ed. 1507 (a), 52 Stat. 73.)

(b) Insofar as applicable, the benefits of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended, shall extend to persons given employment under the provisions of this title, including the employees of the committees and associations referred to in subsection (c) of this section and the members of such committees. (7 U. S. C. 1940 ed. 1507 (b), 52 Stat. 74.)

(c) The Board may establish or utilize committees or associations of producers in the administration of this title and make payments to such committees or associations to cover the estimated administrative expenses to be incurred by them in cooperating in carrying out this title and may provide that all or part of such estimated expenses may be included in the insurance premiums provided for in this title. (7 U. S. C. 1940 ed. 1507 (c), 52 Stat. 74.)

(d) The Secretary of Agriculture may allot to bureaus and offices of the Department of Agriculture or transfer to such other agencies of the State and Federal Governments as he may request to assist

in carrying out this title any funds made available pursuant to the provisions of section 516 of this Act. (7 U. S. C. 1940 ed. 1507 (d), 52 Stat. 74.)

(e) In carrying out the provisions of this title the Board may, in its discretion, utilize producer-owned and producer-controlled cooperative associations. (7 U. S. C. 1940 ed., 1507 (e), 52 Stat. 74.)

Crop Insurance

SEC. 508. To carry out the purposes of this title the Corporation is authorized and empowered—

(a) (1) Commencing with the wheat, cotton, and flax crops planted for harvest in 1945, to insure, upon such terms and conditions not inconsistent with the provisions of this title as it may determine, producers of wheat, cotton, and flax against loss in yields due to unavoidable causes, including drought, flood, hail, wind, frost, winter-kill, lightning, fire, excessive rain, snow, wild-life, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board. Such insurance shall cover a percentage to be determined by the Board not in excess of 75 per centum of the recorded or appraised average yield of such commodities on the insured farm for a representative period subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, which are subject to the same conditions, may be fair and just. Such insurance shall not cover losses due to the neglect or malfeasance of the producer, or to the failure of the producer to reseed to the same crop in areas and

under circumstances where it is customary to so reseed, or to the failure of the producer to follow established good farming practices. Insurance shall not be provided in any county unless written applications therefor are filed covering at least fifty farms or one-third of the farms normally producing the agricultural commodities authorized to be insured, except that insurance may be provided for producers on farms situated in a local producing area bordering on a county with a crop-insurance program. The Board may limit insurance in any county or area, or on any farm, on the basis of the insurance risk involved.

(2) For the purpose of determining the most practical plan, terms, and conditions of insurance with respect to corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugarcane, timber and forests, potatoes and other vegetables, citrus and other fruits, tame hay, and any other agricultural commodity, if sufficient actuarial data are available, as determined by the Board, to insure upon such terms and conditions not inconsistent with the provisions of this title as it may determine, producers of such agricultural commodities against loss due to the unavoidable causes covered in paragraph (1) of this subsection: *Provided,* That such insurance shall be limited in 1945 to corn and tobacco and to not more than three additional crops for each year thereafter. Insurance provided for any agricultural commodity under this paragraph shall be subject to the limitations and conditions provided in paragraph (1) of this subsection, shall be for a period of not more than

three years, and shall be limited to producers in not to exceed twenty counties selected by the Board as representative of the several areas where the agricultural commodity is normally produced: *Provided, however,* That such insurance may cover a percentage not in excess of 75 per centum of the investment in the crop, as determined by the Board. The Corporation shall report annually to the Congress the results of its operations as to each commodity under this paragraph. (7 U. S. C. 1940 ed. Supp. V, 1508 (a), 52 Stat 74, 835, 55 Stat. 255, 58 Stat. 918.)

(b) To fix adequate premiums for insurance in the agricultural commodity or in cash, at such rates as the Board deems sufficient to cover claims for crop losses on such insurance and to establish as expeditiously as possible a reasonable reserve against unforeseen losses. Such premiums shall be collected at such time or times, or shall be secured in such manner, as the Board may determine: *Provided,* That, after the crop year of 1949, not more than a sum equivalent to 25 per centum of the premiums collected in the preceding year (beginning calculation of premiums collected in the crop year of 1949) shall be used for administrative expenses in any current operating year. (7 U. S. C. 1940 ed. Supp. V, 1508 (b), 52 Stat. 74, 55 Stat. 255, 58 Stat. 918.)

(c) To adjust and pay claims for losses in the agricultural commodity or in cash, under rules prescribed by the Board: *Provided, however,* That, after the crop year of 1949, if the total amount of accumulated claims for losses on any agricultural commodity for any year exceeds the total

amount of the premiums collected less the accumulated premium reserves of the Corporation with respect to any such commodity, (which reserves, after the crop year of 1948, shall not be less than 10 per centum of the premiums collected on such commodity), such claims shall be paid on a pro rata reduced basis. The Corporation shall provide for the posting annually in each county at the county courthouse of a list of indemnities paid for losses on farms in such county. In the event that any claim for indemnity under the provisions of this title is denied by the Corporation, an action on such claim may be brought against the Corporation in the United States district court, or in any court of record of the State having general jurisdiction, sitting in the district or county in which the insured farm is located, and jurisdiction is hereby conferred upon such district courts to determine such controversies without regard to the amount in controversy: *Provided,* That no suit on such claim shall be allowed under this section unless the same shall have been brought within one year after the date when notice of denial of the claim is mailed to and received by the claimant. (7 U. S. C. 1940 ed. Supp. V, 1508 (c), 52 Stat. 74, 55 Stat. 255, 58 Stat. 918.)

(d) From time to time, in such manner and through such agencies as the Board may determine, to purchase, handle, store, insure, provide storage facilities for, and sell the agricultural commodity, and pay any expenses incidental thereto, it being the intent of this provision, however, that, insofar as practicable, the Corporation shall purchase the agricultural commodity

only at the rate and to a total amount equal to the payment of premiums in cash by farmers or to replace promptly the agricultural commodity sold to prevent deterioration; and shall sell the agricultural commodity only to the extent necessary to cover payments of indemnities and to prevent deterioration: *Provided, however,* That nothing in this section shall prevent prompt offset purchases and sales of the agricultural commodity for convenience in handling. Nothing in this section shall prevent the Corporation from accepting, for the payment of premiums, notes payable in the commodity insured, or the cash equivalent, upon such security as may be determined pursuant to subsection (b) of this section, and from purchasing the quantity of the commodity represented by any of such notes not paid at maturity. The restriction on the purchase and sale of the agricultural commodity provided in this section shall be made a part of any crop insurance agreement made under this title. Notwithstanding any provision of this title, there shall be no limitation upon the legal or equitable remedies available to the insured to enforce against the Corporation the foregoing restriction with respect to purchases and sales of the agricultural commodity. (7 U. S. C. 1940 ed. Supp. V, 1508 (d), 52 Stat. 75, 55 Stat. 255, 256.)

(e) In connection with insurance upon yields of cotton, to include provision for additional premium and indemnity in terms of lint cotton to cover loss of cottonseed, such additional premium and indemnity

to be determined on the basis of the average relationship between returns from cottonseed and returns from lint cotton for the same period of years as that used for computing yields and premium rates. (7 U. S. C. 1940 ed. Supp. V, 1508 (e), 55 Stat. 256.)

Indemnities Exempt From Levy

SEC. 509. Claims for indemnities under this title shall not be liable to attachment, levy, garnishment, or any other legal process before payment to the insured or to deduction on account of the indebtedness of the insured or his estate to the United States except claims of the United States or the Corporation arising under this title. (7 U. S. C. 1940 ed. 1509, 52 Stat. 75.)

Deposit of Funds

SEC. 510. All money of the Corporation not otherwise employed may be deposited with the Treasurer of the United States or in any bank approved by the Secretary of the Treasury, subject to withdrawal by the Corporation at any time, or with the approval of the Secretary of the Treasury may be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States. Subject to the approval of the Secretary of the Treasury, the Federal Reserve banks are hereby authorized and directed to act as depositories, custodians, and fiscal agents for the Corporation in the performance of its powers conferred by this title. (7 U. S. C. 1940 ed. 1510, 52 Stat. 75.)

Tax Exemption

SEC. 511. The Corporation, including its franchise, its capital, reserves, and surplus, and its income and property, shall be exempt from all taxation now or hereafter imposed by the United States or by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. (7 U. S. C. 1940 ed. 1511, 52 Stat. 75.)

Fiscal Agent of Government

SEC. 512. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and it may also be employed as a financial agent of the Government; and it shall perform all such reasonable duties, as a depository of public money and financial agent of the Government, as may be required of it. (7 U. S. C. 1940 ed. 1512, 52 Stat. 75.)

Accounting by Corporation

SEC. 513. The Corporation shall at all times maintain complete and accurate books of account and shall file annually with the Secretary of Agriculture a complete report as to the business of the Corporation. The financial transactions of the Corporation shall be audited at least once each year by the General Accounting Office for the sole purpose of making a report to Congress, together with such recommendations as the Comptroller General of the United States may deem advisable:

Provided, That such report shall not be made until the Corporation shall have had reasonable opportunity to examine the exceptions and criticisms of the Comptroller General or the General Accounting Office, to point out errors therein, explain or answer the same, and to file a statement which shall be submitted by the Comptroller General with his report. (7 U. S. C. 1940 ed. 1513, 52 Stat. 76.)

Crimes and Offenses

SEC. 514. (a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining for himself or another money, property, or anything of value, under this title, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both. (7 U. S. C. 1940 ed. 1514 (a), 52 Stat. 76.)

(b) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both. (7 U. S. C. 1940 ed. 1514 (b), 52 Stat. 76.)

(c) Whoever, being connected in any capacity with the Corporation, (1) embezzles, abstracts, purloins, or willfully misapplies

any moneys, funds, securities, or other things of value, whether belonging to the Corporation or pledged or otherwise entrusted to it; or (2) with intent to defraud the Corporation, or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Corporation, makes any false entry in any book, report, or statement of, or to, the Corporation or draws any order, or issues, puts forth, or assigns any note or other obligation or draft, mortgage, judgment, or decree thereof; or (3) with intent to defraud the Corporation, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of the Corporation, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both. (7 U. S. C. 1940 ed. 1514 (c), 52 Stat. 76.)

(d) Whoever willfully shall conceal, remove, dispose of, or convert to his own use or to that of another, any property mortgaged or pledged to, or held by, the Corporation, as security for any obligation, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both. (7 U. S. C. 1940 ed. 1514 (d), 52 Stat. 76.)

(e) Whoever conspires with another to accomplish any of the acts made unlawful by the preceding provisions of this section shall, on conviction thereof, be subject to the same fine or imprisonment, or both, as is applicable in the case of conviction for doing such unlawful act. (7 U. S. C. 1940 ed. 1514 (e), 52 Stat. 77.)

(f) The provisions of sections 112, 113,

114, 115, 116, and 117 of the Criminal Code of the United States (U. S. C., title 18, secs. 202 to 207, inclusive) insofar as applicable, are extended to apply to contracts or agreements with the Corporation under this title: *Provided, however,* That the provisions of section 3741 of the Revised Statutes (U. S. C., title 41, sec. 22) and sections 114 and 115 of the Criminal Code of the United States shall not apply to any crop-insurance agreements made under this title. (7 U. S. C. 1940 ed. 1514 (f), 52 Stat. 77.)

Advisory Committee

SEC. 515. The Secretary of Agriculture is authorized to appoint from time to time an advisory committee, consisting of not more than five members experienced in agricultural pursuits and appointed with due consideration to their geographical distribution, to advise the Corporation with respect to carrying out the purposes of this title. The compensation of the members of such committee shall be determined by the Board but shall not exceed $10 per day each while actually employed and actual necessary traveling and subsistence expenses, or a per diem allowance in lieu thereof. (7 U. S. C. 1940 ed. 1515, 52 Stat. 77.)

Appropriations and Regulations

SEC. 516. (a) There are hereby authorized to be appropriated such sums, not in excess of $12,000,000 for each fiscal year beginning after June 30, 1938, as may be necessary to cover the operating and administrative costs of the Corporation, which shall be allotted to the Corporation in such

amounts and at such time or times as the Secretary of Agriculture may determine: *Provided*, That expenses in connection with the purchase, transportation, handling, or sale of the agricultural commodity may be considered by the Corporation as being non-administrative or nonoperating expenses. For the fiscal year ending June 30, 1939, the appropriation authorized under this subsection is authorized to be made only out of the unexpended balances for the fiscal year ending June 30, 1938, of the sums appropriated pursuant to section 15 of the Soil Conservation and Domestic Allotment Act, as amended. (7 U. S. C. 1940 ed. Supp. V, 1516 (a), 52 Stat. 77, 55 Stat. 255, 256.)

(b) The Secretary and the Corporation, respectively, are authorized to issue such regulations as may be necessary to carry out the provisions of this title. (7 U. S. C. 1940 ed. 1516 (b), 52 Stat. 77.)

Separability

SEC. 517. The sections of this title and subdivisions of sections are hereby declared to be separable, and in the event any one or more sections or parts of the same of this title be held to be unconstitutional, the same shall not affect the validity of other sections or parts of sections of this title. (7 U. S. C. 1940 ed. 1517, 52 Stat. 77.)

SEC. 518. "Agricultural Commodity," as used in this title, means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugarcane, timber and forests, potatoes and other vegetables, citrus and other fruits, tame hay, or any other agricultural commodity determined by the Board pursuant to sub-

section (a) (2) of section 508 of this title, or any one or more of such commodities, as the context may indicate. (7 U. S. C. 1940 ed. Supp. V, 1518, 55 Stat. 256, 58 Stat. 919.)

Right to Amend

SEC. 519. The right to alter, amend, or repeal this title is hereby reserved. (7 U. S. C. 1940 ed. Supp. V. 1519, 52 Stat. 77, 55 Stat. 256.)

2. Section 5 of the Federal Register Act (Act of July 26, 1935, c. 417, sec. 5, 49 Stat. 500, 501, 44 U. S. C. 305) provides as follows:

> (a) There shall be published in the Federal Register (1) all Presidential proclamations and Executive orders, except such as have no general applicability and legal effect or are effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof; (2) such documents or classes of documents as the President shall determine from time to time have general applicability and legal effect; and (3) such documents or classes of documents as may be required so to be published by Act of the Congress: *Provided,* That for the purposes of this Act every document or order which shall prescribe a penalty shall be deemed to have general applicability and legal effect.
>
> (b) In addition to the foregoing there shall also be published in the Federal Register such other documents or classes of documents as may be authorized to be published pursuant hereto by regulations prescribed hereunder with the approval of the President; but in no case shall comments or news

items of any character whatsoever be authorized to be published in the Federal Register.

Section 7 of the Federal Register Act (Act of July 26, 1935, c. 417, sec. 7, 49 Stat. 500, 502, 44 U. S. C. 307) provides as follows:

> No document required under section 5 (a) to be published in the Federal Register shall be valid as against any person who has not had actual knowledge thereof until the duplicate originals or certified copies of the document shall have been filed with the Division and a copy made available for public inspection as provided in section 2; and, unless otherwise specifically provided by statute, such filing of any document, required or authorized to be published under section 5, shall, except in cases where notice by publication is insufficient in law, be sufficient to give notice of the contents of such document to any person subject thereto or affected thereby. The publication in the Federal Register of any document shall create a rebuttable presumption (a) that it was duly issued, prescribed, or promulgated; (b) that it was duly filed with the Division and made available for public inspection at the day and hour stated in the printed notation; (c) that the copy contained in the Federal Register is a true copy of the original; and, (d) that all requirements of this Act and the regulations prescribed hereunder relative to such document have been complied with. The contents of the Federal Register shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number.

3. The Wheat Crop Insurance Regulations, approved February 5, 1945, provide in part as follows (10 Fed. Reg. 1585 *et seq.*, February 7, 1945):

PART 414—WHEAT CROP INSURANCE REGULATIONS

* * * * *

SEC. 414.1 *Availability of wheat crop insurance.*—(a) Wheat crop insurance under contracts covering the 1945, 1946 and 1947 crop years will be provided in accordance with the regulations in this part. For the 1945 crop year, however, no insurance will be provided on winter wheat * * * (10 Fed. Reg. 1586, 10 F. R. 10343.)

* * * * *

SEC. 414.37 *Meaning of terms.*—For the purpose of the Wheat Crop Insurance Program, the term:

* * * * *

(v) "Wheat crop" means all seeded spring and winter wheat, including volunteer wheat, other volunteer small grains and vetch, growing with the seeded wheat crop, and including small grains seeded with the growing wheat crop on acreage not released by the Corporation. The term wheat crop shall not include volunteer wheat not growing with the seeded wheat crop, wheat seeded with a mixture of flax or other small grains or vetch, true type winter wheat seeded in the spring, winter wheat in the 1945 crop year, and spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year. (10 Fed. Reg. 1591.)

* * * * *

SEC. 414.42. Modification of insurance *contract.*—No notice to any county committee or representative of the Corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver of or change in any part of the insurance contract or to estop the Corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation; nor shall any provision or condition of the insurance contract or any forfeiture be held to be waived by any delay or omission by the Corporation in exercising its rights and powers thereunder or by any requirement, act, or proceeding, on the part of the Corporation or of its representatives, relating to appraisal or to any examination herein provided for. (10 Fed. Reg. 1592.)

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